

October 16, 2006

Dave Walls
Executive Director
California Building and Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA, 95833

RE: Proposed Building Standards of the California Building Standards Commission, the Department of Housing and Community Development, the Division of the State Architect, the Office of Statewide Health Planning and Development, and the Office of the State Fire Marshal to California Code of Regulations, Title 24, California Building Standards Code

Dear Mr. Walls:

It is with regret that the California Association of Adult Day Services (CAADS) must oppose the content of the proposed State Fire Marshal regulations scheduled for public hearing on October 16, 2006 as they affect licensed Adult Day Programs and Adult Day Health Care centers. We also must express our deep dismay at the process by which the proposed regulations affecting our members were developed. There has been a continued absence of communication with stakeholders representing our adult day services facilities and other facility types impacted by these regulations unlike any we have experienced with other state departments. The failure of the responsible agencies to engage in an open dialogue with the adult day services stakeholders affected by the regulations is contrary to public policy and serves neither the interests nor objectives of the affected state agencies and departments nor those of the many stakeholders affected by these regulations. As a result, we are unable to support a regulations package that makes significant changes to existing law and has been developed without the benefit of our input and understanding of the issues.

To provide some background, CAADS originally participated in stakeholder meetings with the Office of the State Fire Marshal in 2002 and again in early 2003 when a set of emergency regulations affecting our member facilities was proposed. In a July 2003 public hearing, the State Fire Marshal withdrew the regulations. At that time, CAADS was promised that meetings among stakeholders and other interested parties would be convened by the State Fire Marshal prior to the introduction of another set of regulations. No meetings were convened with us.

In February 2005, a revised regulatory proposal was the subject of the Fire and Life Safety Building Standards Advisory Committee meeting. CAADS again submitted written testimony and presented oral testimony at the Committee hearing, essentially reiterating our opposition to the content and the lack of discussion among agencies and stakeholders to reach consensus. At that hearing, the Advisory Committee returned the relevant sections of the regulations package to the State Fire Marshal staff with the direction to initiate a stakeholder meeting with CAADS and others prior to the next regulatory cycle.

No contact was made with CAADS or any of the aging and long term care constituents who testified on February 2005 and no discussions took place subsequent to that hearing. In fact, when one of our staff contacted the State Fire Marshal's office in April 2006 to check on the status of the regulations package that we had opposed in 2005, she was told that the package was returned for further study and was not being worked on.

We learned just last week that the regulatory proposal that is the object of our opposition today was brought to the Advisory Committee in July 2006. We have been unable to locate the meeting notice for the July Advisory Committee meeting on either the State Fire Marshal or the Building Standards Commission website. The websites are extremely difficult to navigate for a member of the public. Neither CAADS nor any other members of the public who had testified in opposition to the 2005 regulations were placed on a public notice list and therefore were not aware of the July hearing and did not submit testimony. The only reason we became aware of the hearing today is by performing a word search on the website late last week.

The Office of the State Fire Marshal has an obligation to discuss with stakeholders proposed regulatory action that will impact businesses and operations in California. While not held specifically to the rulemaking requirements within the Administrative Procedures Act, the Commission and its related agencies and offices are bound by their role as public agencies to engage relevant publics in the rulemaking process. They have failed in this obligation.

The proposed regulations have a far-reaching economic and programmatic impact on many segments of California within the long term care and aging community. It is incumbent upon the Office of the State Fire Marshal to attempt to reconcile the interests of public safety with the state's compelling and articulated public policy requirement in complying with the United States Supreme Court's Olmstead decision which permits the elderly and persons with disabilities to live in and receive services in the least restrictive environment of choice.

CAADS has prepared specific comments on the regulations as an attachment to this testimony. In brief, CAADS opposes the following components of the regulations package:

- The description within the Statement of Reasons that characterize the current classification of our facilities as being “Institutional,” which is inaccurate and misleading. The current occupancy classification is “Educational” and has been for at least 25 years. (See attached State Fire Marshal Opinion dated September 4, 2003).
- The reclassification of our facilities from E Group Occupancy to *both* I Group and R Group Occupancies which contain different and conflicting requirements. Our programs are neither residential nor institutional as programs operate less than 24 hours - usually between four and eight hours per day. Standards for these occupancies are not compatible with programs that are licensed and regulated by the State as daytime programs only. The potential for disrupting the lives of thousands of elders and families who rely on our programs for day-time services is immense, as we have already witnessed with the application of unachievable facility requirements for “non-ambulatory” persons who have been forced to move from one facility to another.
- The lack of data in the Initial Statement of Reasons to justify the cost/benefit of the installation of automatic sprinkler systems for a category of providers that, as far as we can determine, has never had a fire fatality. There is no provision for “grandfathering” existing facilities or transitioning to the new requirements.
- The lack of an analysis comparing and contrasting the current standards for each occupancy group with the new proposed standards. In our case, the changes appear to be quite significant. CAADS does not have the technical expertise to analyze the proposed building standards for the impact on our members. The “I” Group Occupancy is designed for 24-hour facilities, which are providers are not. This analysis should be performed by a third party expert with no stake in the outcome of the regulations.
- The lack of analysis of the significant economic impact the proposed regulations will have on Adult Day Programs, which are primarily small, not-for-profit adult day programs and a mix of Adult Day Health Care providers offering services that enable elderly and younger disabled adults to remain living independently at home. In fact, the Initial Statement of Reasons states that there is no economic impact on small businesses. We assert there is a significant economic impact on small businesses that should be analyzed and presented to the Commission as part of this regulations package.

CAADS urges the State Building Commission to act at its earliest opportunity to withdraw all sections of the regulations defining and affecting Adult Day

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Programs and Adult Day Health Care centers and return them to the State Fire Marshal for further study with the relevant stakeholder groups.

We are more than willing to work with all public and private entities with a stake in these regulations to fashion a solution that balances competing public policy interests, safeguards public safety, and minimizes unintended consequences to the state and the private sector. We look forward to the dialogue prior to adoption of any regulations affecting our providers.

There are state and federal legal issues, significant fiscal impacts on the state and private sectors, ethical considerations, and public policy issues that demand a thoughtful discussion with stakeholders and multiple departments, including the Department of Developmental Services, Department of Aging, Department of Social Services and Department of Health Services. Developing regulations that contain such significant changes and contain such high economic cost for the State of California as those contained within this package must not be done within a vacuum.

Thank you for your consideration of our testimony. If you have any questions, please contact me at (916) 552-7400.

Respectfully submitted,

Lydia Missaelides, MHA
Executive Director

Enclosures:

- 1) State Fire Marshal Code Interpretation Letter 9-4-03 #03-024
- 2) CAADS Analysis of the Regulations

cc: Rosario Marin, Secretary, Consumer Affairs
Ruben Grijalva, State Fire Marshal
Lora Connolly, Acting Director, Department of Aging
Kim Belshé, Secretary, Health and Human Services Agency
Kacy Hutchinson, Office of the Governor